IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.420 of 2005.

R.S.R.T.C. Versus Umesh Chand Srimal

Date of Order ::: 05/12/2006

Hon'ble Mr. Narendra Kumar Jain, J.

Mr. Virendra Lodha, Counsel for defendant-appellant.

By the Court :

Heard learned counsel for the defendant-appellant on the application under Section 5 of the Limitation Act for condonation of delay of 409 days in filing the second appeal as well as on the admission of the second appeal.

The plaintiff-respondent filed a suit for declaration and permanent injunction in the Lower Court, which was partly decreed and it was declared that the order Exhibit-4 dated 04.06.1980, whereby the allotment of the plot of land was cancelled, as illegal and void. The defendant was further restrained from

charging economic rent and development charges. The learned Lower Court has recorded a finding that these charges relate to the period prior to 1980 before delivery of the possession of the plot, in dispute. The Lower Court has also recorded a finding that from the evidence it is clear that the defendant had informed the plaintiff that they are unable to deliver the possession of the plot, in dispute at the relevant time. The judgment and decree passed by the Lower Court has been affirmed by the First Appellate Court also.

I have heard learned counsel for the defendant-appellant and after considering his submissions in the light of the judgment and decree passed by both the Courts below, I find that the controversial issues involved in the present case relate to the question of facts and there is a concurrent finding of fact by both the Courts below, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal also.

I have also examined the reasons given by the appellant for condonation of delay of more than one

year in filing the second appeal i.e. 409 days. The application filed by the appellant shows that no reasonable explanation has been given by the learned counsel for the appellant for condonation of delay in filing the appeal.

Accordingly, the application under Section 5 of the Limitation Act is dismissed.

Consequently, the second appeal is dismissed being barred by limitation as well as on merits also.

(Narendra Kumar Jain) J.

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